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Finalization and approval of the additional international legal instrument against trafficking in and transporting of migrants

Proposals and contributions

Addendum

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* A/AC.254/35.

II. Proposals and contributions

Argentina*

[Original: Spanish]

Argentina proposes that the following section be inserted after article 7 and the subsequent sections renumbered accordingly:

"*Article (...)*

"1. States Parties shall make provision in their respective legislations to establish the liability of commercial overland carriers for the transport of passengers and crew members, in conformity with the immigration law of the country of destination or transit. To that end, the legislation of States Parties shall provide that commercial overland carriers shall, as an absolute prerequisite for undertaking the carriage, demand all due documentation required for admission of their passengers to the territory of the State of destination or transit in any of the categories of admission stipulated in domestic immigration law.

"2. States Parties shall establish in their domestic legislation the obligation for commercial overland carriers, in cases of transit through one or more States, to declare the names of passengers whom they are transporting to the immigration authority competent for the latter. States Parties shall also adopt measures in their domestic legislation to render the commercial overland carrier responsible for the actual exit of such persons from the corresponding territories and shall provide that, in the event that passengers declared as being transported fail to leave the country in the manner, at the place and within the time limit stipulated in the immigration law of the transit country, the immigration authority of that country may arrange for the return of such persons at the exclusive cost of the carrier.

"3. It shall be possible for the provisions of this article not to apply within the territorial scope of economic unions, customs unions or free-trade zones that have specific regulations governing the entry into and movement of persons within such integrated geographical areas that do not conform to the provisions of this article.

"4. Any State Party that has sufficient grounds to believe that a commercial overland carrier is involved in activities related to trafficking in migrants may request the necessary assistance to counter such activities from the State Party in which that carrier is lawfully constituted, or in which the vehicles used by such carrier in the provision of its services are situated or registered, or in which such carrier has its actual place of business, in conformity with the legal provisions of the country concerned.

"5. States Parties shall establish ongoing cooperation mechanisms for the detection of any carriage of persons, from one country to another or in transit to a third country, undertaken by persons on an individual or organized, regular or occasional basis without due authorization, by a means of overland transport.

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* Amendment previously issued in document A/AC.254/5/Add.24.

"6. States Parties shall establish institutional cooperation mechanisms for the detection and punishment of freight carriers who engage in the smuggling of migrants.

"7. States Parties shall offer the fullest assistance with regard to the investigation of methods of overland trafficking coming within their jurisdiction. Authorities involved shall act with all due diligence in order to ensure that such assistance is furnished expeditiously with a view to avoiding any impairment of such cooperation."

Azerbaijan*

[Original: Russian]

1. The Criminal Code of Azerbaijan contains no provision regarding either the smuggling of migrants or, indeed, of persons in general.

2. It is proposed that the titles of the 1951 Convention and 1967 Protocol mentioned in the preamble and in the text of the draft protocol should be given in full.

Article 1: Relation to the United Nations Convention against Transnational Organized Crime

3. It is proposed that option 1 be retained.

Article 15: Return of smuggled migrants

4. In order to determine material liability in connection with the deportation process, it is proposed that the following text be added to article 15:

"States Parties agree that all expenses incurred as a result of the temporary accommodation or deportation (return) of a person who has been smuggled into the territory of a State Party shall be recoverable from the carrier or transportation company that transported that person into the territory of the State Party."

Cameroon**

[Original: French]

Article 8: Compliance measures and arrangements

Paragraph 2 (a)

1. Delete the word "illegal" before the word "smuggling", the adjective being redundant.

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* Amendment previously issued in document A/AC.254/L.200.

** Amendment previously issued in document A/AC.254/5/Add.24.

Article 11: Prevention

Paragraph 1

2. Delete the words "and seizing", since the operation of inspection is deemed sufficiently rigorous for the prevention stage.

Article 14: Training

Paragraph 3

3. Paragraph 3 should become a new article and read as follows:

"*Article (...)*
"*Technical cooperation*

"Each State Party shall make every effort to provide the necessary resources, including vehicles, computer systems and document readers, to combat the smuggling of migrants. States Parties with relevant expertise shall provide technical assistance to States lacking such expertise."

Article 15: Return of smuggled migrants

Paragraph 1

4. It would be advisable to reword this paragraph in the light of international human rights standards, the economic potential of each State and the length of stay of each migrant.

China*

[Original: English]

New article

After article 11, add a new article as follows:

"*Article (...)*
"*Measures to eliminate the root causes*

"States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment."

Colombia*

[Original: Spanish]

Preamble

1. It is proposed to amend preambular paragraph (i) to read as follows:

* Amendment previously issued in document A/AC.254/5/Add.24.

"(i) *Also convinced* that, to counter this phenomenon, a global and regional approach, including socio-economic measures, is necessary in order to improve the situation of vulnerable population groups in the countries of origin,"

2. It is proposed to add a new preambular paragraph after paragraph (k) as follows:

"(...) *Taking note* of the conventions and other relevant instruments of the United Nations on the protection of migrants,"

Article 11: Prevention

3. It is proposed to add a new paragraph after paragraph 2 as follows:

"(...) With a view to discouraging and preventing the smuggling of migrants, States Parties shall seek, where appropriate, to conclude bilateral or multilateral agreements aimed at ensuring orderly migration."

Germany*

[Original: English]

Article 10: Information

Paragraph 3

After the words "States Parties", add the words ", in particular those with common borders or located along smuggling routes,".

Holy See*

[Original: English]

Article 11: Prevention

The following paragraphs should be added at the end of the article:

"(...) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

"(...) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants."

* Amendment previously issued in document A/AC.254/5/Add.24.

India*

[Original: English]

Article 4: Criminalization

Paragraph 2

Replace paragraph 2 with the following:

"2. Each State Party shall also adopt such legislative or other measures as may be necessary to establish as a criminal offence the following conduct:

"(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence set forth in paragraphs 1 and 2 of this article;

"(b) Attempting to commit an offence set forth in paragraphs 1 and 2 of this article;

"(c) Participating as an accomplice in an offence set forth in this article; or

"(d) In any other way contributing to the commission of an offence set forth in this article."

Libyan Arab Jamahiriya**

[Original: Arabic]

Article 8: Compliance measures and arrangements

Paragraph 2

1. The Libyan Arab Jamahiriya suggests the deletion of subparagraph (b), because enhancing the provisions of the Protocol will be a sine qua non once the Protocol comes into force, so there will be no need for such a provision.

Article 10: Information

Paragraphs 1 and 2

2. Paragraphs 1 and 2 should be merged, because their meaning is identical. The revised paragraph should read as follows:

"(...) Pursuant to article 22 of the Convention, States Parties shall cooperate in the field of public information with a view to preventing potential migrants from becoming victims of criminal organizations by increasing public awareness of the fact that smuggling of migrants is a criminal activity frequently perpetrated by criminal organizations for profit and that it poses serious risks to those involved."

3. In subparagraph (e), the word "also" should be added after the words "practices and".

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* Amendment previously issued in document A/AC.254/5/Add.24.

** Amendments previously issued in document A/AC.254/5/Add.24, based on the text of the revised draft Protocol contained in document A/AC.254/Add.1/Rev.2.

Article 14: Training

Paragraph 2

4. Subparagraph (a) should be deleted because it duplicates article 12.

Paragraph 3

5. The words "potential tools" should be used instead of the word "resources", because the articles listed in the text are not resources but potential tools.

Article 15: Return of smuggled migrants

Paragraph 1

6. Add at the end of the paragraph the words "whenever such return poses no risk to his or her life and protects him or her from any illegal harm that might be incurred upon return".

Article 16: Implementation

7. Paragraphs 1 and 2 should be merged to read:

> "For the purpose of examining the progress made by the States Parties in achieving the implementation of the obligations undertaken in the present Protocol, the States Parties will provide periodic reports to the Conference of the Parties to the Convention. States shall provide such reports together with the reports submitted in accordance with article 23 of the Convention and on the same dates."

Lithuania*

[Original: English]

Article 10: Information

Paragraph 2

1. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

2. In the opinion of Lithuania, the use of the term "victim" raises some doubts. The term "victim" suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling of migrants.

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* Amendments previously issued in document A/AC.254/5/Add.24.

Mexico

[Original: Spanish]

1. It is proposed to add the following paragraphs after article 3 *bis*:*

"2. The relatives of the migrant shall not become punishable for acts committed by an organized criminal group of which the relative is not a member whose purpose is the illegal trafficking in and transporting of that migrant.

"3. The relatives of the migrant shall not become punishable by reason of the profits obtained by an organized criminal group from those relatives as a result of the illegal trafficking in and transporting of that migrant."

Article 8: Compliance measures and arrangements**

2. Mexico proposes to add the following new paragraph after paragraph 2:

"(...) If two or more States Parties have already concluded an agreement or treaty in respect of a subject that is dealt with in this Protocol or otherwise have established their relations in respect to that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of this Protocol."

Syrian Arab Republic*

[Original: Arabic]

Preamble

1. Remove the square brackets in preambular subparagraphs (a), (c), (d), (f)-(h), (o) and (q).

2. After preambular subparagraph (q), add a new subparagraph similar to the final subparagraph of the preamble of the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Trafficking in Persons Protocol"), to read as follows:

"(...) *Taking into account* the provisions of the United Nations Convention against Transnational Organized Crime,"

Article 6: Jurisdiction

Paragraph 1

3. Add the words "in accordance with their basic legal principles" after the words "shall take".

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* Amendment previously issued in document A/AC.254/5/Add.24.

** Amendment previously issued in document A/AC.254/L.208.

Article 8: Compliance measures and arrangements

Paragraph 1

4. Add the words "in accordance with their basic legal principles" after the word "adopt".

Paragraph 2

5. Delete the word "illegal" in subparagraph (a), because trafficking is per se an illegal act.

Article 11: Prevention

6. The Syrian Arab Republic endorses the two new paragraphs proposed by the Holy See for addition to this article (see above under Holy See).

Article 11 bis

7. The Syrian Arab Republic endorses the new article proposed by China (see above under China).

Additional articles

8. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the Trafficking in Persons Protocol;

(b) Status of the victim in the receiving State, in line with article 5 of the Trafficking in Persons Protocol;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the Trafficking in Persons Protocol.

European Community*

[Original: English and French]

Article 11: Prevention

1. It is proposed that article 11 be revised to read as follows:

"*Article 11*
"*Prevention*

"1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels.

* Amendment previously issued in document A/AC.254/L.198.

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying cooperation with border control agencies of other States, in particular by establishing and maintaining direct channels of communication.

"3. With a view to facilitating effective coordination between their competent border control agencies, States Parties may conclude bilateral arrangements or agreements providing for the posting of liaison officers."

2. The above proposal for article 11 seeks to ensure greater consistency with the text of article 8, paragraph 1, of the draft Trafficking in Persons Protocol. Moreover, paragraph 3 of the proposal is to replace the new paragraph for article 11 proposed by the Netherlands in document A/AC.254/5/Add.24.